

**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
CONSUMER SERVICES DIVISION**

IN THE MATTER OF DETERMINING
Whether there has been a violation of the
Mortgage Broker Practices Act of Washington by:

STACY A. HEINRICKS,
dba THE LOAN CONNECTION
REAL ESTATE SERVICES

Respondent.

NO. C-04-060-04-SC01

STATEMENT OF CHARGES and
NOTICE OF INTENTION TO ENTER
AN ORDER TO DENY LICENSE
APPLICATION AND COLLECT
INVESTIGATION FEE

INTRODUCTION

Pursuant to RCW 19.146.220 and RCW 19.146.223, the Director of the Department of Financial Institutions of the State of Washington (Director) is responsible for the administration of chapter 19.146 RCW, the Mortgage Broker Practices Act (Act). The referenced statutes (RCW) and rules (WAC) are attached, in pertinent part. After having conducted an investigation pursuant to RCW 19.146.210 and RCW 19.146.235, and based upon the facts available as of April 15, 2004, the Director institutes this proceeding and finds as follows:

I. FACTUAL ALLEGATIONS

1.1 Respondent: Stacy A. Heinrichs, dba The Loan Connection Real Estate Services (Respondent)

submitted an application as a sole proprietorship to the Department of Financial Institutions of the State of Washington (Department) for a license to conduct business as a Mortgage Broker at the following location:

28676 NE 63rd Way
Carnation, WA 98014

The application was received by the Department on November 21, 2003.

1.2 Credit Rating: The credit report received by the Department from Respondent on November 21, 2003, displayed tax liens (released) and unpaid collection accounts.

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1 **1.3 Richard Todd Heinrichs (Mr. Heinrichs):** In the course of the investigation of Respondent's license
2 application, the Department compiled the following information about Mr. Heinrichs:

- 3 A. Addendum A to Respondent's application for licensure lists Mr. Heinrichs as Respondent's
4 spouse.
- 5 B. Addendum B to Respondent's application for licensure lists Mr. Heinrichs as an Independent
6 Contractor and loan originator for Respondent.
- 7 C. In or around April 2000, Mr. Heinrichs was licensed by the Department of Real Estate of the
8 State of California (CA DRE) to conduct business as a Real Estate Broker, as owner of a sole
9 proprietorship located in Elk Grove, California doing business as The Loan Connection Real
10 Estate Services.
- 11 D. In or around December 2001, the CA DRE conducted an audit of Mr. Heinrichs's trust
12 account, which disclosed a trust fund shortage of \$9,718.12.
- 13 E. In or around January 2002, in the Superior Court of California, County of Sacramento, Mr.
14 Heinrichs was convicted of a violation of section 487(a) of the California Penal Code (Grand
15 Theft), a misdemeanor, on his plea of Nolo Contendere. The violation involved theft of trust
16 funds, and the sentence included an order to make restitution of \$9,750.
- 17 F. In or around December 2002, Mr. Heinrichs's Real Estate Broker license was revoked by the
18 CA DRE due to Mr. Heinrichs's conviction of a crime involving moral turpitude, willful
19 violations of California real estate law, failure to maintain funds in a trust account,
20 commingling of monies of others with his own money, and committing fraud, dishonest acts
21 or misrepresentations. The FACTUAL FINDINGS section of the proposed decision of the
22 Administrative Law Judge in the August 22, 2002 license revocation proceeding, and entered
23 September 23, 2002, includes the following:

“His [Richard Heinrichs’s] testimony at hearing was so transparently false that the trier of fact can only conclude that respondent’s dishonesty transcends his business dealings with [the victim of the Grand Theft]”.

1.4 Washington Master Business License: On or around February 12, 2003, the Washington State Department of Licensing (WA DOL) received an application for a Master Business License for Mr. Heinrichs to operate a sole proprietorship in the State of Washington, doing business as The Loan Connection Real Estate Services. The application lists “Stacy Heinrichs, wife” as the preparer, lists the “Business Open Date” as January 2000 “In California,” lists the applicant’s bank as “River City Bank,” and describes the services to be provided as follows: “We are a Mortgage Broker. We prepare loan paperwork for clients and submit to lenders.” On or around May 1, 2003, Stacy and Richard Heinrichs faxed the following request to the WA DOL: “Please make the following change to our business license: Please list Stacy Anne Heinrichs as the Sole Proprietor and list Richard Todd Heinrichs as the Spouse. We are also requesting a new license to be sent to us reflecting this change.”

1.5 Bank Account of Applicant: On November 21, 2003, the Department received a check from Respondent for the application deposit. The check was drawn on a Bank of America account that names Richard T. Heinrichs and Stacy A. Heinrichs as account holders. In or around December 2003, Respondent opened a separate account with Bank of America for The Loan Connection Real Estate Services, which names “Richard or Stacy Heinrichs” as account holders.

1.6 Unlicensed Activity by Mr. Heinrichs, dba The Loan Connection Real Estate Services: Based on information contained in a final HUD-1 settlement statement for a residential mortgage loan on a residence located at 3923 NE Evans Lane, Moses Lake, Washington 98837 (the 3923 NE Evans Lane residence), “The Loan Connection” received a total of \$4,989.75 for the following:

- A. \$805.00 Loan Origination Fee
- B. \$400.00 Appraisal Fee
- C. \$13.50 Credit Report
- D. \$350.00 Broker Processing Fee
- E. \$3,421.25 Yield Spread Premium (POC)

1 Security Title Guaranty, Inc. (Security Title), located in Moses Lake, Washington, acted as the settlement agent
2 for the loan. Security Title issued check number 18991, dated October 25, 2002, in the amount of \$4,989.75 to
3 "The Loan Connection." According to Security Title, a package containing check number 18991, along with a
4 cover letter indicating the check was for "Loan Origination Fees," was sent to "Richard Todd, The Loan
5 Connection, 8925 Emerald Park Dr, Elk Grove, CA 95624" via Federal Express on October 25, 2002. On
6 October 28, 2002, Federal Express's delivery of this package was confirmed by the signature "R. Todd." The
7 check was endorsed with a pre-printed stamp "PAY TO THE ORDER OF RIVER CITY BANK FOR
8 DEPOSIT ONLY THE LOAN CONNECTION" and deposited on or around October 28, 2002. To date, Mr.
9 Heinrichs has never applied for, or received, a license to conduct the business of a Mortgage Broker from the
10 Department.

11 **1.7 Failure of Mr. Heinrichs, dba The Loan Connection Real Estate Services to Pay a Third Party**

12 **Service Provider:** On January 16, 2003, the Department received a complaint from A-1 Appraisals (A-1), a
13 third-party service provider located in Moses Lake, Washington, alleging Mr. Heinrichs failed to pay for an
14 appraisal.

15 A. A-1 provided a two-page faxed communication dated September 27, 2002. The fax cover
16 sheet contains "The Loan Connection Real Estate Services" letterhead listing its location as
17 8925 Emerald Park Dr, Elk Grove, California 95624. The second page is a pre-printed form
18 labeled "Appraisal Request Form" requesting an appraisal for "Richard Todd The Loan
19 Connection" on the 3923 NE Evans Lane residence. The request form indicates the completed
20 appraisal was to be delivered to The Loan Connection c/o Richard Todd, 8925 Emerald Park
21 Dr, Elk Grove, CA 95624. The request form is signed by "Richard Todd."

22 B. A-1 provided a copy of their letter, dated November 22, 2002, to The Loan Connection, 8925
23 Emerald Park Dr, Elk Grove, CA 95624, stating the appraisal on the 3923 NE Evans Lane
24 residence had been performed on October 4, 2002 and A-1 had not received payment in the
25 amount of \$400.00.

C. A-1 provided a copy of their letter, dated December 20, 2002, to The Loan Connection, 8925 Emerald Park Dr, Elk Grove, CA 95624, again stating that the appraisal had been performed on the 3923 NE Evans Lane residence and payment had not been received.

As discussed in paragraph 1.6 above, a residential mortgage loan on the 3923 NE Evans Lane residence closed on October 24, 2002 and Mr. Heinrichs received fees related to the origination of that loan on or around October 28, 2002. To date, according to A-1, Mr. Heinrichs has failed to pay the appraisal fee.

1.8 Failure of Mr. Heinrichs, dba The Loan Connection Real Estate Services to Maintain Funds From Borrower for Payment of Third-Party Providers in Trust: As discussed in paragraph 1.6 above, Mr. Heinrichs received fees related to the origination of a residential mortgage loan on the 3923 NE Evans Lane residence, including \$400.00 for "Appraisal Fee," on or around October 28, 2002. These fees were deposited into the operating account of Mr. Heinrichs's sole proprietorship, doing business as The Loan Connection Real Estate Service, at River City Bank in California, thereby commingling trust funds with operating funds. When those trust funds were not available for their intended purpose, they were effectively converted to a use other than originally intended.

1.9 Statement of Charges Issued Against Mr. Heinrichs: On April 15, 2004, the Department issued Statement of Charges and Notice of Intention to Enter an Order to Impose Fine, Prohibit From Industry, Order Restitution, and Collect Investigation Fee C-04-088-04-SC01 against Richard Todd Heinrichs for the apparent unlicensed activity, the apparent failure to pay a third-party service provider, and the apparent failure to maintain funds from a borrower for payment of a third-party service provider in trust, as discussed in paragraphs 1.6, 1.7 and 1.8 above, respectively.

1.10 Respondent's Employment History and Experience: In the employment history document provided by Respondent in an attempt to support experience adequate to support her designation as Designated Broker, Respondent asserts she was employed as "Operations Manager" of "The Loan Connection Real Estate Services, Elk Grove, CA" from January 2000 through December 2002. The employment history document lists her duties during that period as including:

1 “Directed and reviewed all areas of loan companies [sic] operation, including loan origination,
2 processing, general and trust accounting”

3 During Respondent’s asserted period of employment as Operations Manager for Mr. Heinrichs’s sole
4 proprietorship, Mr. Heinrichs had his California Real Estate Broker license revoked by the CA DRE for various
5 violations of California real estate law, including a trust fund shortage of \$9,718.12 (as discussed in paragraph
6 1.3E above), allegedly conducted unlicensed residential mortgage loan activity in the State of Washington (as
7 discussed in paragraph 1.5 above), allegedly failed to pay a third-party service provider in the State of
8 Washington (as discussed in paragraph 1.6 above), and allegedly failed to maintain fees from a borrower for
9 payment of a third-party service provider in trust (as discussed in paragraph 1.7 above).

10 **1.11 Incomplete Application:** Respondent’s application is inadequate or incomplete in the following areas:

- 11 A. Respondent’s information labeled “Addendum A-Ownership” contains contradictory
12 information. Under “(1) Who Owns This Company?,” Respondent has indicated “Stacy
13 Heinrichs (Owner) and Richard Heinrichs (Spouse).” Under “(2) What percentage does each
14 person own?,” Respondent has indicated “Stacy Heinrichs-100%.”
- 15 B. Respondent’s information labeled “Addendum B-Personnel” does not include the Respondent
16 as personnel, either as loan originator or Designated Broker, and does not include her method
17 of compensation.
- 18 C. Respondent’s resume, included with information labeled “Addendum K-Designated Broker,”
19 fails to satisfy the requirements for acceptable support of experience, as described on the
20 application form.
- 21 D. Respondent has failed to meet the requirement to provide a completed Mortgage Broker
22 Applicant Individual Background Form (IBF) for her spouse, as described at the top of the IBF
23 under the heading “Sole Proprietorship.”
- 24 E. Respondent’s information labeled “Addendum N” and “Addendum O,” specifically addressing
25 the license history and status of civil litigation for “the applicant,” fails to satisfy the

requirement to provide such information for the applicant, any principals and the designated broker, as described on the application form.

F. Respondent has provided a surety bond listing the principal as “The Loan Connection Real Estate Services” and a bond rider listing the principal as “Stacy Anne Heinrichs.” The required principal on the bond is “Stacy Anne Heinrichs dba: The Loan Connection Real Estate Services.”

1.12 On-Going Investigation: The Department’s investigation into alleged violations of the Act by Respondent continues to date.

II. GROUNDS FOR ENTRY OF ORDER

2.1 Requirement to Provide Information: Based on the Factual Allegations set forth in Section I above, Respondent has failed to meet the requirements of RCW 19.146.205(1), RCW 19.146.210(1), WAC 208-660-030(1) and WAC 208-660-040 by failing to provide an application with information in the written form prescribed by the Director.

2.2 Requirement to Provide Surety Bond or Approved Alternative: Based on the Factual Allegations set forth in Section I above, Respondent has failed to meet the requirements of RCW 19.146.205(4), RCW 19.146.210(1), and WAC 208-660-080 by failing to file a surety bond or approved alternative meeting the requirements of the Director.

2.3 Requirement to Demonstrate Financial Responsibility, Character and General Fitness: Based on the Factual Allegations set forth in Section I above, Respondent has failed to meet the requirements of RCW 19.146.210(1) and WAC 208-660-160(5) for failing to demonstrate financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a belief that the business will be operated honestly, fairly, and efficiently within the purposes of the Mortgage Broker Practices Act.

2.4 Authority to Deny Application for License: Pursuant to RCW 19.146.210(2), RCW 19.146.220(1) and WAC 208-660-160, the Director shall not issue and shall deny a license application if the conditions of RCW 19.146.210(1) have not been met by the applicant.

2.5 Authority to Collect Investigation Fee: Pursuant to RCW 19.146.210(2), RCW 19.146.228(3), WAC 208-660-060(1) and WAC 208-660-061, upon completion of processing and reviewing an application for a license, the Department will prepare a billing, regardless of whether a license has been issued, calculated at the rate of \$37.16 per hour that each staff person devoted to processing and reviewing the application. The application deposit will be applied against this bill. Any amount left owing to the Department will be billed to and paid promptly by the applicant.

III. NOTICE OF INTENTION TO ENTER ORDER

Respondent's violations of the provisions of chapter 19.146 RCW and chapter 208-660 WAC, as set forth in the above Factual Allegations and Grounds for Entry of Order, constitute a basis for the entry of an Order under RCW 19.146.210, RCW 19.146.220, RCW 19.146.221 and RCW 19.146.223. Therefore, it is the Director's intention to ORDER that:

- 3.1 Respondent Stacy A. Heinrichs, dba The Loan Connection Real Estate Services' application for a Mortgage Broker License be denied; and
- 3.2 Respondent Stacy A. Heinrichs, dba The Loan Connection Real Estate Services pay an investigation fee in the amount of \$743.20, calculated at \$37.16 per hour for the thirty (30) staff hours devoted to the investigation, less the ten (10) staff hours paid out of Respondent's application deposit.

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IV. AUTHORITY AND PROCEDURE

This Statement of Charges and Notice of Intention to Enter an Order to Deny License Application and Collect Investigation Fee is entered pursuant to the provisions of RCW 19.146.220, RCW 19.146.221, RCW 19.146.223 and RCW 19.146.230, and is subject to the provisions of chapter 34.05 RCW (The Administrative Procedure Act). Respondent may make a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this Statement of Charges and Notice of Intention to Enter an Order to Deny License Application and Collect Investigation Fee.

Dated this 15th day of April 2004.

/s/
CHUCK CROSS
Acting Director and Enforcement Chief
Division of Consumer Services
Department of Financial Institutions

Presented by:

Mark T. Olson
Financial Examiner

**RCW 19.146.205 License -- Application -- Exchange of fingerprint data with federal bureau of investigation -- Fee -
- Bond or alternative.**

(1) Application for a mortgage broker license under this chapter shall be in writing and in the form prescribed by the director. The application shall contain at least the following information:

(a) The name, address, date of birth, and social security number of the applicant, and any other names, dates of birth, or social security numbers previously used by the applicant, unless waived by the director;

(b) If the applicant is a partnership or association, the name, address, date of birth, and social security number of each general partner or principal of the association, and any other names, dates of birth, or social security numbers previously used by the members, unless waived by the director;

(c) If the applicant is a corporation, the name, address, date of birth, and social security number of each officer, director, registered agent, and each principal stockholder, and any other names, dates of birth, or social security numbers previously used by the officers, directors, registered agents, and principal stockholders unless waived by the director;

(d) The street address, county, and municipality where the principal business office is to be located;

(e) The name, address, date of birth, and social security number of the applicant's designated broker, and any other names, dates of birth, or social security numbers previously used by the designated broker and a complete set of the designated broker's fingerprints taken by an authorized law enforcement officer; and

(f) Such other information regarding the applicant's or designated broker's background, financial responsibility, experience, character, and general fitness as the director may require by rule.

(2) The director may exchange fingerprint data with the federal bureau of investigation.

(3) At the time of filing an application for a license under this chapter, each applicant shall pay to the director the appropriate application fee in an amount determined by rule of the director in accordance with RCW 43.24.086 to cover, but not exceed, the cost of processing and reviewing the application. The director shall deposit the moneys in the financial services regulation fund, unless the consumer services account is created as a dedicated, nonappropriated account, in which case the director shall deposit the moneys in the consumer services account.

(4)(a) Each applicant for a mortgage broker's license shall file and maintain a surety bond, in an amount of not greater than sixty thousand dollars nor less than twenty thousand dollars which the director deems adequate to protect the public interest, executed by the applicant as obligor and by a surety company authorized to do a surety business in this state as surety. The bonding requirement as established by the director may take the form of a uniform bond amount for all licensees or the director may establish by rule a schedule establishing a range of bond amounts which shall vary according to the annual average number of loan originators or independent contractors of a licensee. The bond shall run to the state of Washington as obligee, and shall run first to the benefit of the borrower and then to the benefit of the state and any person or persons who suffer loss by reason of the applicant's or its loan originator's violation of any provision of this chapter or rules adopted under this chapter. The bond shall be conditioned that the obligor as licensee will faithfully conform to and abide by this chapter and all rules adopted under this chapter, and shall reimburse all persons who suffer loss by reason of a violation of this chapter or rules adopted under this chapter. Borrowers shall be given priority over the state and other persons. The state and other third parties shall be allowed to receive distribution pursuant to a valid claim against the remainder of the bond. In the case of claims made by any person or entity who is not a borrower, no final judgment may be entered prior to one hundred eighty days following the date the claim is filed. The bond shall be continuous and may be canceled by the surety upon the surety giving written notice to the director of its intent to cancel the bond. The cancellation shall be effective thirty days after the notice is received by the director. Whether or not the bond is renewed, continued, reinstated, reissued, or otherwise extended, replaced, or modified, including increases or decreases in the penal sum, it shall be considered one continuous obligation, and the surety upon the bond shall not be liable in an aggregate or cumulative amount exceeding the penal sum set forth on the face of the bond. In no event shall the penal sum, or any portion thereof, at two or more points in time be added together in determining the surety's liability. The bond shall not be liable for any penalties imposed on the licensee, including, but not limited to, any increased damages or attorneys' fees, or both, awarded under RCW 19.86.090. The applicant may obtain the bond directly from the surety or through a group bonding

arrangement involving a professional organization comprised of mortgage brokers if the arrangement provides at least as much coverage as is required under this subsection.

(b) In lieu of a surety bond, the applicant may, upon approval by the director, file with the director a certificate of deposit, an irrevocable letter of credit, or such other instrument as approved by the director by rule, drawn in favor of the director for an amount equal to the required bond.

(c) In lieu of the surety bond or compliance with (b) of this subsection, an applicant may obtain insurance or coverage from an association comprised of mortgage brokers that is organized as a mutual corporation for the sole purpose of insuring or self-insuring claims that may arise from a violation of this chapter. An applicant may only substitute coverage under this subsection for the requirements of (a) or (b) of this subsection if the director, with the consent of the insurance commissioner, has authorized such association to organize a mutual corporation under such terms and conditions as may be imposed by the director to ensure that the corporation is operated in a financially responsible manner to pay any claims within the financial responsibility limits specified in (a) of this subsection.

[2001 c 177 § 4; 1997 c 106 § 9; 1994 c 33 § 8; 1993 c 468 § 6.]

RCW 19.146.210 License -- Requirements for issuance -- Denial -- Validity -- Surrender -- Interim license -- Rules.

(1) The director shall issue and deliver a mortgage broker license to an applicant if, after investigation, the director makes the following findings:

(a) The applicant has paid the required license fees;

(b) The applicant has complied with RCW [19.146.205](#);

(c) Neither the applicant, any of its principals, or the designated broker have had a license issued under this chapter or any similar state statute suspended or revoked within five years of the filing of the present application;

(d) Neither the applicant, any of its principals, or the designated broker have been convicted of a gross misdemeanor involving dishonesty or financial misconduct or a felony within seven years of the filing of the present application;

(e) The designated broker, (i) has at least two years of experience in the residential mortgage loan industry or has completed the educational requirements established by rule of the director and (ii) has passed a written examination whose content shall be established by rule of the director; and

(f) The applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a belief that the business will be operated honestly, fairly, and efficiently within the purposes of this chapter.

(2) If the director does not find the conditions of subsection (1) of this section have been met, the director shall not issue the license. The director shall notify the applicant of the denial and return to the applicant the bond or approved alternative and any remaining portion of the license fee that exceeds the department's actual cost to investigate the license.

(3) The director shall issue a license under this chapter to any licensee issued a license under chapter 468, Laws of 1993, that has a valid license and is otherwise in compliance with the provisions of this chapter.

(4) A license issued pursuant to this chapter is valid from the date of issuance with no fixed date of expiration.

(5) A licensee may surrender a license by delivering to the director written notice of surrender, but the surrender does not affect the licensee's civil or criminal liability arising from acts or omissions occurring before such surrender.

(6) To prevent undue delay in the issuance of a license and to facilitate the business of a mortgage broker, an interim license with a fixed date of expiration may be issued when the director determines that the mortgage broker has substantially fulfilled the requirements for licensing as defined by rule.

[1997 c 106 § 10; 1994 c 33 § 10; 1993 c 468 § 7.]

RCW 19.146.220 Director -- Powers and duties -- Violations as separate violations -- Rules.

(1) The director shall enforce all laws and rules relating to the licensing of mortgage brokers, grant or deny licenses to mortgage brokers, and hold hearings.

(2) The director may impose the following sanctions:

(a) Deny applications for licenses for: (i) Violations of orders, including cease and desist orders issued under this chapter; or (ii) any violation of RCW 19.146.050 or 19.146.0201 (1) through (9);

(b) Suspend or revoke licenses for:

(i) False statements or omission of material information on the application that, if known, would have allowed the director to deny the application for the original license;

(ii) Failure to pay a fee required by the director or maintain the required bond;

(iii) Failure to comply with any directive or order of the director; or

(iv) Any violation of RCW 19.146.050, 19.146.060(3), 19.146.0201 (1) through (9) or (12), 19.146.205(4), or 19.146.265;

(c) Impose fines on the licensee, employee or loan originator of the licensee, or other person subject to this chapter for:

(i) Any violations of RCW 19.146.0201 (1) through (9) or (12), 19.146.030 through 19.146.080, 19.146.200, 19.146.205(4), or 19.146.265; or

(ii) Failure to comply with any directive or order of the director;

(d) Issue orders directing a licensee, its employee or loan originator, or other person subject to this chapter to:

(i) Cease and desist from conducting business in a manner that is injurious to the public or violates any provision of this chapter; or

(ii) Pay restitution to an injured borrower; or

(e) Issue orders removing from office or prohibiting from participation in the conduct of the affairs of a licensed mortgage broker, or both, any officer, principal, employee, or loan originator of any licensed mortgage broker or any person subject to licensing under this chapter for:

(i) Any violation of 19.146.0201 (1) through (9) or (12), 19.146.030 through 19.146.080, 19.146.200, 19.146.205(4), or 19.146.265; or

(ii) False statements or omission of material information on the application that, if known, would have allowed the director to deny the application for the original license;

(iii) Conviction of a gross misdemeanor involving dishonesty or financial misconduct or a felony after obtaining a license; or

(iv) Failure to comply with any directive or order of the director.

(3) Each day's continuance of a violation or failure to comply with any directive or order of the director is a separate and distinct violation or failure.

(4) The director shall establish by rule standards for licensure of applicants licensed in other jurisdictions.

(5) The director shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a

*residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the director's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order.

[1997 c 106 § 12; 1997 c 58 § 879; 1996 c 103 § 1; 1994 c 33 § 12; 1993 c 468 § 8.]

RCW 19.146.221 Action by director -- Hearing -- Sanction.

The director may, at his or her discretion and as provided for in *RCW 19.146.220(2), take any action specified in RCW 19.146.220(1). If the person subject to such action does not appear in person or by counsel at the time and place designated for any administrative hearing that may be held on the action then the person shall be deemed to consent to the action. If the person subject to the action consents, or if after hearing the director finds by a preponderance of the evidence that any grounds for sanctions under this chapter exist, then the director may impose any sanction authorized by this chapter.

[1994 c 33 § 13.]

RCW 19.146.223 Director -- Administration and interpretation.

The director shall have the power and broad administrative discretion to administer and interpret the provisions of this chapter to fulfill the intent of the legislature as expressed in RCW 19.146.005.

[1994 c 33 § 2.]

RCW 19.146.228 Fees -- Rules -- Exception.

The director shall establish fees by rule in accordance with RCW 43.24.086 sufficient to cover, but not exceed, the costs of administering this chapter. These fees may include:

- (1) An annual assessment paid by each licensee on or before a date specified by rule;
- (2) An investigation fee to cover the costs of any investigation of the books and records of a licensee or other person subject to this chapter; and
- (3) An application fee to cover the costs of processing applications made to the director under this chapter.

Mortgage brokers shall not be charged investigation fees for the processing of complaints when the investigation determines that no violation of this chapter occurred or when the mortgage broker provides a remedy satisfactory to the complainant and the director and no order of the director is issued. All moneys, fees, and penalties collected under the authority of this chapter shall be deposited into the financial services regulation fund, unless the consumer services account is created as a dedicated, nonappropriated account, in which case all moneys, fees, and penalties collected under this chapter shall be deposited in the consumer services account.

[2001 c 177 § 5; 1997 c 106 § 13; 1994 c 33 § 9.]

RCW 19.146.230 Administrative procedure act application.

The proceedings for denying license applications, issuing cease and desist orders, suspending or revoking licenses, and imposing civil penalties or other remedies issued pursuant to this chapter and any appeal therefrom or review thereof shall be governed by the provisions of the administrative procedure act, chapter 34.05 RCW.

[1994 c 33 § 16; 1993 c 468 § 10.]

RCW 19.146.235 Director -- Investigation powers -- Duties of person subject to examination or investigation.

For the purposes of investigating complaints arising under this chapter, the director may at any time, either personally or by a designee, examine the business, including but not limited to the books, accounts, records, and files used therein, of every licensee and of every person engaged in the business of mortgage brokering, whether such a person shall act or claim to act under or without the authority of this chapter. For that purpose the director and designated representatives shall have access during regular business hours to the offices and places of business, books, accounts, papers, records, files, safes, and vaults of all such persons.

1 The director or designated person may direct or order the attendance of and examine under oath all persons whose
2 testimony may be required about the loans or the business or subject matter of any such examination or investigation, and
3 may direct or order such person to produce books, accounts, records, files, and any other documents the director or
4 designated person deems relevant to the inquiry. If a person who receives such a directive or order does not attend and
testify, or does not produce the requested books, records, files, or other documents within the time period established in the
directive or order, then the director or designated person may issue a subpoena requiring attendance or compelling
production of books, records, files, or other documents. No person subject to examination or investigation under this
chapter shall withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other
information.

5 Once during the first two years of licensing, the director may visit, either personally or by designee, the licensee's place or
6 places of business to conduct a compliance examination. The director may examine, either personally or by designee, a
sample of the licensee's loan files, interview the licensee or other designated employee or independent contractor, and
7 undertake such other activities as necessary to ensure that the licensee is in compliance with the provisions of this chapter.
For those licensees issued licenses prior to March 21, 1994, the cost of such an examination shall be considered to have
8 been prepaid in their license fee. After this one visit within the two-year period subsequent to issuance of a license, the
director or a designee may visit the licensee's place or places of business only to ensure that corrective action has been
taken or to investigate a complaint.

9 [1997 c 106 § 14; 1994 c 33 § 17; 1993 c 468 § 11.]

WAC 208-660-030 Application procedure for mortgage broker license.

(1) Each person required to have a license must apply to the director by filing the following:

(a) An application in the form prescribed by the director, including without limit the information required by RCW 19.146.205 (1)(a) through (d).

(b) A surety bond and related power of attorney, or approved alternative to the bond, in accordance with RCW 19.146.205(3) and WAC 208-660-080 and 208-660-08010.

(c) The application deposit.

(d) In regard to each principal and designated broker of the applicant:

(i) Biographical information including complete and accurate employment history and a description of any material litigation involving the person;

(ii) An independent credit report obtained from a recognized credit reporting agency;

(iii) A signed authorization for a background investigation on a form provided by the department;

(iv) Completed fingerprint cards accepted by the Washington state patrol;

(v) A signed authorization for verification of the existence of a trust account on a form provided by the department;

(vi) A certificate of passing an approved examination (this requirement does not apply to principals); and

(vii) A certificate of satisfactory completion of an approved licensing course, or satisfactory proof of at least two years of experience in accordance with WAC 208-660-040 (this requirement does not apply to principals).

(e) A signed certificate of compliance and authorization to examine trust accounts on a form provided by the department;

(f) Information to support any required branch office certificate, as required by WAC 208-660-070.

(g) Information in regard to each independent contractor retained by the applicant, in accordance with RCW 19.146.200(1).

(h) A copy of any written agreement with a lender or licensee, in accordance with RCW 19.146.040(2).

(i) A copy of any form to be approved by the director in accordance with WAC 208-660-130(2).

(j) If the applicant's principal office is located out-of-state, information in regard to the applicant's registered agent, in accordance with RCW 19.146.220(3).

(2) Notwithstanding any other provision of these rules, the director may deny an application as incomplete if the applicant fails within ten business days to meet a second request from the director for information, except that the director may grant an extension to the applicant when good cause is shown. An example of good cause may include, but is not limited to, death or incapacitating illness of the preparer, or other catastrophic occurrence. Failure to file requested information under such circumstances will not affect new applications filed after the denial. An applicant may reapply upon submission of a new application and an additional application deposit.

[Statutory Authority: RCW 43.320.010, 19.146.223. 01-01-044, § 208-660-030, filed 12/8/00, effective 1/8/01; 96-04-028, recodified as § 208-660-030, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-030, filed 6/21/95, effective 7/22/95. Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-030, filed 1/7/94, effective 2/7/94.]

WAC 208-660-040 Experience requirements.

(1) A designated broker may use the following experience to satisfy the experience requirements of RCW 19.146.210

(1)(e) and 19.146.265:

(a) As a mortgage broker, or as a designated broker, or branch office manager, of a mortgage broker business;

(b) As a mortgage banker, or responsible individual or branch manager, of a mortgage banking business;

(c) As a loan officer, with responsibility primarily for loans secured by a lien on real estate;

(d) As a branch manager of a lender, with responsibility primarily for loans secured by a lien on real estate.

(e) As a mortgage broker with a mortgage broker (or similar) license from another state where the licensing standards are substantially similar to those in this state, as determined by the director.

(2) Satisfactory proof of two years of experience may include valid copies of W-2 or 1099 tax forms verifying employment for the two-year period, valid copies of form 1120 corporate tax returns for the two-year period signed by the broker or manager as owner of the business for the two-year period, or signed letters from a lender on the lender's letterhead verifying that the broker or manager has originated mortgage loans for the two-year period.

[Statutory Authority: RCW 43.320.010, 19.146.223, 01-01-044, § 208-660-040, filed 12/8/00, effective 1/8/01; 96-04-028, recodified as § 208-660-040, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225, 95-13-091, § 50-60-040, filed 6/21/95, effective 7/22/95; 94-23-033, § 50-60-040, filed 11/8/94, effective 12/9/94. Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-040, filed 1/7/94, effective 2/7/94.]

WAC 208-660-060 Department's fees and assessments.

(1) Upon completion of processing and reviewing an application for a license or branch office certificate, the department will prepare a billing, regardless of whether a license or certificate has been issued, calculated at the rate of \$35.98 per hour that each staff person devoted to processing and reviewing the application. The application deposit will be applied against this bill. Any amount left owing to the department will be billed to and paid promptly by the applicant, while any balance remaining from the deposit will be refunded promptly to the applicant.

(2) Upon completion of any examination of the books and records of a licensee, the department will furnish to the licensee a billing to cover the cost of the examination. The examination charge will be calculated at the rate of \$46.26 per hour that each staff person devoted to the examination. The examination billing will be paid by the licensee promptly upon receipt. Licensees that were issued licenses prior to March 21, 1994, have prepaid in their initial license fee the cost of the first compliance examination of the licensee conducted by the department during the first two years after the date of issuance of the license.

(3) Each licensee shall pay to the director an annual assessment of \$513.95 for each license, and \$513.95 for each branch office certificate. The annual assessment(s) will be due no later than the last business day of the month in which the anniversary date of the issuance of the broker's license occurs.

(4) Upon completion of any investigation of the books and records of a mortgage broker other than a licensee, the department will furnish to the broker a billing to cover the cost of the investigation. The investigation charge will be calculated at the rate of \$46.26 per hour that each staff person devoted to the investigation. The investigation billing will be paid by the mortgage broker promptly upon receipt.

[Statutory Authority: RCW 18.44.410, 19.146.223, 19.146.225, 19.146.265, 31.04.165, 31.45.200, 01-12-029, § 208-660-060, filed 5/29/01, effective 7/1/01; 96-04-028, recodified as § 208-660-060, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225, 95-13-091, § 50-60-060, filed 6/21/95, effective 7/22/95; 94-23-033, § 50-60-060, filed 11/8/94, effective 12/9/94. Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-060, filed 1/7/94, effective 2/7/94.]

WAC 208-660-061 Fee increase.

The division intends to increase its fee and assessment rates each year for several bienniums. The division intends to initiate a rule making for this purpose each biennium. This rule provides for an automatic annual increase in the rate of fees and assessments each fiscal year during the 2001-03 biennium.

(1) On July 1, 2002, the fee and assessment rates under WAC 208-660-060, as increased in the prior fiscal year, will increase by a percentage rate equal to the fiscal growth factor for the then current fiscal year. As used in this section, "fiscal growth factor" has the same meaning as the term is defined in RCW 43.135.025.

(2) The director may round off a rate increase under subsection (1) of this section. However, no rate increase may exceed the applicable fiscal growth factor.

(3) By June 1 of each year, the director will make available a chart of the new rates that will take effect on the immediately following July 1.

[Statutory Authority: RCW 18.44.410, 19.146.223, 19.146.225, 19.146.265, 31.04.165, 31.45.200, 01-12-029, § 208-660-061, filed 5/29/01, effective 7/1/01.]

WAC 208-660-080 Surety bond and approved alternatives -- General requirements.

(1) Each applicant for a license and licensee must file and maintain on file with the director:

(a) A surety bond in the required amount and related power of attorney issued by a bonding company or insurance company authorized to do business in this state; or

(b) An approved alternative to a surety bond in the required amount in accordance with WAC 208-660-08010. The required amount of the surety bond or approved alternative ranges from twenty thousand dollars to sixty thousand dollars and is based on the applicant's or licensee's monthly average number of loan originators calculated in accordance with subsection (2) of this section. The surety bond or approved alternative is subject to claims in accordance with RCW 19.146.205 and 19.146.240. Borrowers shall be given priority over the state and other persons who file claims against the bond or approved alternative. The state and other persons shall not receive distributions from the remainder of the bond or approved alternative pursuant to valid claims prior to one hundred eighty days following the date a claim is made against the bond.

(2) The monthly average number of loan originators is calculated as follows:

(a) If the applicant or licensee has not been in the mortgage broker business at any time during the preceding twelve months, the monthly average number of loan originators is determined by adding up the projected number of loan originators to be employed or engaged each month for the first twelve months during which the applicant or licensee will do business, and dividing this total by twelve. The projected number of loan originators must reflect at least the actual number of originators at the inception of business.

(b) If the applicant or licensee has not been in the mortgage broker business at least some portion of each of the preceding twelve months, the monthly average number of loan originators is calculated by adding up the number of loan originators employed or engaged each month (or part thereof) for the number of months the applicant or licensee has been in business during the twelve-month period, and the projected number of loan originators to be employed or engaged each month for any additional months necessary to comprise a total of twelve months (or part thereof), and dividing this total by twelve.

(c) Otherwise, the monthly average number of loan originators as calculated by adding up the number of loan originators employed or engaged each month (or part thereof) for the previous twelve months, and dividing this total by twelve.

(3) Based upon the monthly average number of loan originators, the required surety bond amount is indicated by the following table:

Monthly Average Number of Loan Originators	Minimum Required Bond Amount
up to 3.0	\$20,000
more than 3.0, up to 6.0	\$30,000
more than 6.0, up to 9.0	\$40,000
more than 9.0, up to 15.0	\$50,000
more than 15.0	\$60,000

When calculating the required bond amount, an applicant or licensee shall use the worksheet form approved by the director.

(4) At least forty-five days prior to each anniversary of the issuance of the surety bond or approved alternative, each licensee shall calculate its required bond amount in accordance with subsections (2) and (3) of this section. If the required surety bond amount has changed, then the licensee shall within thirty days of the date of the calculation, file a new surety bond or approved alternative in the required amount or file documentation showing a change in the amount of the existing bond or alternative to the required amount.

(5) Each licensee shall use the bond form, assignment of certificate of deposit form, or irrevocable letter of credit form approved by the director.

[Statutory Authority: RCW 43.320.010, 19.146.223. 01-01-044, § 208-660-080, filed 12/8/00, effective 1/8/01; 96-04-028, recodified as § 208-660-080, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-080,

1 filed 6/21/95, effective 7/22/95; 94-23-033, § 50-60-080, filed 11/8/94, effective 12/9/94. Statutory Authority: 1993 c 468
§ 9. 94-03-009, § 50-60-080, filed 1/7/94, effective 2/7/94.]

2 **WAC 208-660-160 License application denial or condition; license suspension or revocation.**

3 The director may deny or condition approval of a license application, or suspend or revoke a license if the applicant or
licensee, or any principal or designated broker of the applicant or licensee:

- 4 (1) Has failed to pay a fee due to the state in accordance with the Mortgage Broker Practices Act;
- 5 (2) Has not filed the required surety bond or approved alternative or otherwise complied with RCW 19.146.205;
- 6 (3) Has had any license, or any authorization to do business under any similar statute of this or any other state,
suspended, revoked, or restricted within the prior five years;
- 7 (4) Has within the prior seven years been convicted of a felony, or a gross misdemeanor involving dishonesty or
financial misconduct;
- 8 (5) Has failed to demonstrate financial responsibility, character, and general fitness such as to command the confidence
of the community and to warrant a belief that the business will be operated honestly, fairly, and efficiently within the
purposes of the Mortgage Broker Practices Act. The director may find that the person has failed to make the demonstration
if, among other things:
 - 9 (a) The person is or has been subject to an injunction issued pursuant to the Mortgage Broker Practices Act or the
Consumer Protection Act; or
 - 10 (b) An independent credit report issued by a recognized credit reporting agency indicates that the person has a
substantial history of unpaid debts;
- 11 (6) Has omitted, misrepresented, or concealed material facts in obtaining a license or in obtaining reinstatement thereof;
- 12 (7) Has violated the provisions of the Mortgage Broker Practices Act, or the Consumer Protection Act;
- 13 (8) Has had its surety bond, approved alternative, or equivalent form of business insurance, canceled or revoked for
cause;
- 14 (9) Has allowed the licensed mortgage broker business to deteriorate into a condition which would result in denial of a
new application for a license;
- 15 (10) Has aided or abetted an unlicensed person to practice in violation of the Mortgage Broker Practices Act;
- 16 (11) Has demonstrated incompetence or negligence that results in injury to a person or that creates an unreasonable risk
that a person may be harmed;
- 17 (12) Is insolvent in the sense that the value of the applicant's or licensee's liabilities exceed its assets or in the sense that
the applicant or licensee cannot meet its obligations as they mature;
- 18 (13) Has failed to comply with an order, directive, or requirement of the director, or his or her designee, or with an
assurance of discontinuance entered into with the director, or his or her designee;
- 19 (14) Has performed an act of misrepresentation or fraud in any aspect of the conduct of the mortgage broker business or
profession;
- 20 (15) Has failed to cooperate with the director, or his or her designee, including without limitation by:
 - 21 (a) Not furnishing any necessary papers or documents requested by the director for purposes of conducting an
investigation for disciplinary actions or denial, suspension, or revocation of a license; or
 - 22 (b) Not furnishing any necessary papers or documents requested by the director for purposes of conducting an
investigation into a complaint against the licensee filed with the department, or providing a full and complete written
explanation of the circumstances of the complaint upon request by the director;
- 23 (16) Has interfered with an investigation or disciplinary proceeding by willful misrepresentation of facts before the
director or the director's designee, or by the use of threats or harassment against a client, witness, employee of the licensee,
or representative of the director for the purpose of preventing them from discovering evidence for, or providing evidence
in, any disciplinary proceeding or other legal action;
- 24 (17) Has failed to provide a required certificate of passing an approved examination;
- 25 (18) Has failed to provide a required certificate of satisfactory completion of an approved licensing course or, in the
alternative, satisfactory proof of two years' experience in accordance with WAC 208-660-040; or
- (19) Has failed to provide a required certificate of satisfactory completion of an approved continuing education course.

[Statutory Authority: RCW 43.320.010, 19.146.223. 01-01-044, § 208-660-160, filed 12/8/00, effective 1/8/01; 96-04-028,
recodified as § 208-660-160, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-160,
filed 6/21/95, effective 7/22/95. Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-160, filed 1/7/94, effective
2/7/94.]